EMPLOYMENT TRIBUNALS

Claimant: Miss J Steele v **Respondent:** Sky UK Ltd

Heard at: London South (via CVP) **On:** 10-14 June 2024; 30-31 July 2024 (in Chambers)

Before: Employment Judge Fredericks-Bowyer
Tribunal Member Singh
Tribunal Member Hutchings

Appearances
For the claimant: Mr C Kirby (Lay Representative)
For the respondent: Ms K Boyle (Counsel)

RESERVED JUDGMENT

1. The claimant's complaint under *s43M Employment Rights Act 1996* is dismissed because it was brought outside the time limit when it was reasonably practicable for the claim to have been brought within time; it is beyond the jurisdiction of the Tribunal.

2. The respondent concedes that the claimant was disabled by the following relevant conditions from the corresponding dates:-

   2.1. Muscle Tension Dysphoria – 28 November 2022;
   2.2. Fibromyalgia – 28 November 2022; and
   2.3. Asthma – 8 November 2019.

3. The shoulder complaint suffered by the claimant from July 2022 was not a disability as defined by *s6 Equality Act 2010* at the time to which the claim about it relates (September 2021).

4. The claimant's complaints of less favourable treatment because of her disabilities are not well-founded and are dismissed.

5. The claimant's complaints of less favourable treatment because of her sex are not well-founded and are dismissed.

6. The respondent failed to make a reasonable adjustment to its policy of not allowing a potential witness (Mr Kirby) to accompany the claimant to a formal grievance meeting.

7. All other complaints of a failure to make reasonable adjustments are not well-founded and are dismissed.

8. It is not just and equitable for any claim found to be not well-founded to be treated as being filed in time, and so those claims are also dismissed because the Tribunal does not have jurisdiction to hear them.

9. The claimant is entitled to remedy for the one failure to make reasonable adjustments allegation which is well founded. That remedy will be determined at a further remedy hearing.

REASONS

Introduction

1. This is our reserved judgment in this case. We heard the case over a period of five days from 10 to 14 June 2024. At the conclusion of the hearing, there was not sufficient time to determine the issues in the case. The Panel met privately in chambers on 30 and 31 July 2024 to determine those issues. This is the unanimous judgment of us all. The Panel is unanimously agreed on the facts found and the conclusions drawn from those facts.

2. The claimant remains employed by the respondent as a Regional Sales Executive. The respondent is a well known multi-media entity. The claimant's specific role involved the selling of TV advertisement to business. She complains about (1) direct sex discrimination occasioned by comments she says were made to her about being a single mother, (2) direct disability discrimination in relation to how she says she was treated as a result of her health conditions, (3) a failure to make reasonable adjustments, and (4) detriments suffered as a result of her proposing to attend jury service following her selection.

3. The claimant gave evidence in support of her own case. The respondent called evidence from Mr Davies, Mr Sanderson, and Mr Potter. Mr Davies and Mr Potter line managed the claimant. Mr Sanderson is a senior manager. Their roles in the dispute are set out below. We did not hear live evidence from Mr Robbie or Ms Meikle, although we did have witness statements from those two staff members of the respondent.

4. We also had access to a bundle of documents which ran to 1137 pages. Page references in this bundle relate to the numbered page of that bundle.

Reasonable adjustments

5. The claimant presents with complicated health conditions. It is clear that the hearing itself caused a great deal of stress and anxiety for the claimant, which exacerbated her health conditions. This presented itself on the first day with the claimant unable to speak for a portion of the day. We discussed reasonable adjustments for the claimant in the hearing. It was made clear that the claimant could request a break at any point in the day. We adopted regular breaks of 15 minutes every 45 minutes. Where the claimant was directed to a document to read something, she was given the time to read it and the important information was read out to her. The claimant was very keen to get through the hearing and to get the hearing finished.

6. An issue arose due to the claimant's conditions even with the adjustments in place. The claimant's evidence was part heard overnight on the first day. On the next morning, Mr Kirby attended and said that the claimant was too unwell to continue giving evidence. He suggested that we start hearing respondent evidence instead. We did not accede to this request. The claimant had started her evidence, and would be unable to speak to Mr Kirby about the case or her evidence until finished. She also would be unable to hear any respondent witness evidence in order to provide guidance or instructions to Mr Kirby. When we said that we would wait for the claimant to be well enough to carry on, and go part heard on the case if necessary, the claimant said she was able to continue. We gave the claimant the option of seeking a medical adjournment, but she did not to introduce any delay and opted to continue.

7. The claimant was able to give her evidence within the hearing. In our view, she was able to give her evidence clearly and articulately and she was able to make the points she wished to make. Her role in the hearing was less significant when Mr Kirby was cross examining the respondent witnesses. He was able to put the claimant's case to those witnesses in turn. At the end of the hearing, significant time was given for the claimant and Mr Kirby to prepare written submissions for us to take into account. Mr Kirby addressed us alongside presenting those submissions.

8. In our view, despite the claimant's difficulties during the hearing, the hearing was able to be effective and fair.

Issues to be decided

9. At the outset of the hearing, the parties were not entirely clear on the claims and the issues. The parties had attended a case management hearing before Employment Judge Wright on 10 November 2023. The case summary and orders from that hearing (pages 42 to 56) show that the claimant was not clear in that hearing about what claims are being pursued. The list of issues is in draft form with square brackets for the claimant to clarify information. Page 52 records that template issues are set out because they 'may apply'. It records that the victimisation claim has not been set out and it is not clear what allegations amount to victimisation.

10. As a result of the lack of clarity, the claimant was ordered to send a document which properly sets out what her claims were. That was done, and the resultant document gave rise to the list of issues presented to us at the start of the hearing. Mr Kirby noted that the claim relating to jury service detriment was not in the list of issues and should be, so we added that claim in. He also considered that the list was missing

harassment and victimisation claims. The claimant's document did not set out any detail in relation to those claims, as required by EJ Wright's order. There was no particularisation of any such claims, and the respondent had not responded to them. In our view, the claimant had had the opportunity to clarify what those claims were and pursued them, but she had not done so. Even if this was an innocent oversight, the upshot was that they were not claims which had been actively pursued and so which could not be argued at the hearing.

11. We therefore adopted the following issues to be determined in this hearing:-

Time limits

12. *Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 29 January 2023 may not have been brought in time.*

13. *Were the complaints made within the time limit in s.123 EQA? The Tribunal will decide:*

    13.1. *Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?*

        13.1.1. *If not, was there conduct extending over a period?*

        13.1.2. *If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?*

        13.1.3. *If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:*

            13.1.3.1. Why were the complaints not made to the Tribunal in time under the EQA?

            13.1.3.2. In any event, is it just and equitable in all the circumstances to extend time?

Disability

14. *Did the claimant have a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about? The Tribunal will decide:*

    14.1. *Did they have a physical or mental impairment?*

    14.2. *Did it have a substantial adverse effect on their ability to carry out day to-day activities?*

    14.3. *If not, did the claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?*

    14.4. *Would the impairment have had a substantial adverse effect on their ability to carry out day-to-day activities without the treatment or other measures?*

14.5. *Were the substantial adverse effect(s) of the impairment long-term? The Tribunal will decide:*

14.5.1. *did they last at least 12 months, or were they likely to last at least 12 months?*

14.5.2. *if not, were they likely to recur?*

15. *If so, did the Respondent have actual or constructive knowledge that:*

15.1. *The Claimant had a disability?*

15.2. *The Claimant was placed at a substantial comparative disadvantage by any PCP, such that a duty to make reasonable adjustments arose?*

Direct discrimination (Equality Act 2010 section 13) (sex)

16. *Did the Respondent do the following things:*

16.1. *On 4 January 2021 Anton Davies told her not to mention being a single mother.*

16.2. *On 14 July 2021 David Sanderson questioning the claimant's performance whilst she was home schooling her daughter.*

16.3. *On 23 September 2021 Anton Davies made observations about areas in which the claimant needed to improve. The Claimant reconfirmed to the Respondent that she had been home schooling and had ongoing health conditions. The Respondent requests the Claimant hands in their resignation. It is highlighted that the Claimant's "kid" is a distraction. The Claimant alleges she was treated less favourably than her male counterparts.*

16.4. *On 29 October 2021 David Sanderson expressed his disappointment at the claimant's performance and proceeds to further impose his beliefs about how being a single mum meant the Claimant was unlikely to succeed in this role. Given the precedent has already been set by the respondent that Single Mums are looked at less favourable, again the claimants gender is brought to question. The respondent choses to directly highlight single mothers with no reference to fathers and/or parents. The Claimant alleges she was treated less favourably than her male counterparts.*

17. *If so, was this detrimental treatment?*

18. *Was the Claimant treated less favourably than a hypothetical comparator would have been treated in circumstances that were not materially different? Was the less favourable treatment because of the Claimant's sex?*

Direct Discrimination (Equality Act 2010 Section 13 (Disabilty)

19. *Did the respondent do the following things:*

    19.1. *On 23 September 2021 Anton Davies was frustrated with the Claimant as she wanted to drop her suitcase to a hotel before arriving at the London Office due to a problem with her shoulder. Anton Davies dismisses the Claimant's disability with his only concern being that the Claimant is on time for a meeting. The Respondent had been previously made aware of the Claimant's disability during a face to face meeting held at Horecross Hall in July 2021.*

    19.2. *On 16 December 2021 the Claimant had a discussion with Anton Davies surrounding her need to attend the office despite being placed upon the shielding list given her health conditions. The Respondent insisted that the Claimant attend the office or take the day off sick, despite reiterating via mail on the same day those who are not comfortable coming into the office should stay home instead of attending the Christmas party. Claimant alleges that she was treated less favourably than her team counter parts.*

    19.3. *On 1 February 2022 Anton Davies provides feedback on OH Report. Within the feedback it is stated that the Claimant should be on the disability version of this plan. The Claimant discusses what this would mean with the Respondent who emphasises that adjustments are already in place and dismissal on the grounds of capability related ill health is a possibility. The Claimant alleges that she was treated less favourably than her team counterparts.*

    19.4. *On 20 October 2022 Huw Potter shuts down the Claimant by stating he is not interested in her disabilities (Anxiety/ Fibromyalgia/ Asthma) and he is just interested in the next steps as per the Respondent's policy.*

20. *If so, was this detrimental treatment?*

21. *Was this treatment because of a protected characteristic?*

22. *Was the Claimant treated less favourably than a hypothetical comparator would have been treated in circumstances that were not materially different?*

23. *Was the less favourable treatment because of the Claimant's disability?*

Reasonable Adjustments (Equality Act 2010 sections 20 & 21) protected characteristic of disability (disability only)

24. *A "PCP" is a provision, criterion or practice.*

25. *What PCP does the Claimant say that the Respondent applied to her?*

26. *Did the PCPs put the claimant at a substantial disadvantage compared to someone without the claimant's disability? In that by being refused a reasonable adjustment which would otherwise exacerbate her anxiety.*

27. *Did the lack of the adjustment put the claimant at a substantial disadvantage compared to someone without the claimant's disability?*

28. *Did the respondent know or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage?*

29. *If so, did the Respondent fail to take reasonable steps to avoid the disadvantage? The claimant suggests the following steps should have been taken:*

    29.1. *The adjustment recommended in the OH Report dated 14 January 2022 that the Respondent should continue to provide early intervention and support when Claimant has low mood and anxiety.*

    29.2. *On 20 October 2022 Huw Potter should have allowed a companion to join the meeting and future meetings.*

    29.3. *On 10 March 2023 Sean Robbie should have allowed her partner to join the grievance meeting*

30. *Was it reasonable for the respondent to have to take those steps?*

31. *Did the respondent fail to take those steps?*

No jurisdiction for the *s43M Employment Rights Act 1996* claim

32. On 7 July 2021, the claimant was selected for jury service, starting on 31 August 2021 (page 293). She raised this with Mr Davies, her line manager, on 14 July 2021 (page 292). On the same day, he suggested that the service could be deferred on two occasions, which might be helpful in terms of avoiding absence in the second half of the year (page 291). There is some ensuing e-mail discussion, and Mr Davies makes clear that the decision is up to the claimant but that human resources can provide a letter saying that the respondent does not release her if she chooses to defer it (page 289).

33. The claimant contends that there is a detriment in this exchange as a result of her being selected for jury service and proposing to do it, which is a breach of *s43M Employment Rights Act 1996*. Such a claim is subject to the time limit found at *s48(3)* of that Act. The claim must be brought within three months of the alleged detriment if it is to be in time. If this is not done, then time may only be extended where the Tribunal considers that it was not reasonably practicable for the claim to have been brought in time, and that it was then brought in such further time as is reasonable.

34. The 'not reasonably practicable test' is a high hurdle to surmount. It requires a claimant to do more than persuade that it is just to allow the claim to continue. The claimant must show that it was not reasonably practicable for her to have brought her claim in time. This is restrictive, and requires her to show what the reason is for the delay and that that reason meant that it was not reasonably possible for her to have brought her claim in time (*Cygnet Behavioural Health Ltd v Britton [2022] EAT 108; London Underground Ltd v Noel [1999] IRLR 621*).

35. In our judgment, the claimant has offered no reason why it was not reasonably practicable for her to have brought her claim in time. The claimant was perhaps unwell at the time of the alleged detriment, but she was in work and able to manage aspects of her life during the time within which she ought to have brought this claim. In our view, the claimant either did not know that she could bring this claim during that window, or she chose not to. Lack of awareness of the time limit is not an excuse under this test. The claimant was able to research the law and the position if she felt aggrieved, and consequently it was reasonably practicable for her to have discovered the time limit, do what she needed to do, and issue the claim. A lack of legal training is not an excuse, even when balancing illness, and the authorities are clear about that (see for example *Midland Bank Plc v Samuels [1993] UKEAT 672/92/2896*. Plainly, a decision not to make a complaint or explore making a complaint will not satisfy the test.

36. The time limit for the claim expired on or around 14 October 2021. The claim was presented on 28 April 2023. It is around 1.5 years out of time. We have no evidence that it was not reasonably practicable for the claim to be presented in time. It plainly was reasonably practicable for the claim to be presented in time. Time cannot be extended.

37. Consequently, this claim is beyond the jurisdiction of the Tribunal and it must be dismissed. It is not proportionate for us to consider a claim over which we have no jurisdiction, and so we do not consider the claim along with the other complaints in the rest of the judgment which follows.

The claimant's disabilities

The accepted disabilities

38. The claimant mentioned several conditions in her claim documents which she says amount to disabilities. The claimant accepted that the claimant was disabled by some of those conditions, but not all of them. Of those that are relevant to these complaints, the respondent accepted the claimant was disabled by the following:-

    38.1. Muscle Tension Dysphonia from 28 November 2022;

    38.2. Fibromyalgia from 28 November 2022; and

    38.3. Asthma from 8 November 2019.

39. The claimant described the impact these conditions had on her during her evidence. As outlined above, the claimant's health conditions are complex and it is apparent from the types of diagnoses that she has that there is some degree of overlap between them where symptoms of one condition inter-relate to others. For the purposes of this claim, we are satisfied that all of the accepted disabilities are exacerbated by or have acute episodes triggered by stress. That is the nature of the conditions themselves, and the claimant explained that this is what was happening to her at the time to which her claim relates. Although not itself conclusive evidence of how the claimant was affected at the time, we did observe how stress triggered the claimant's conditions generally, and in particular the muscle tension dysphonia

which rendered her unable to speak, and the fibromyalgia which has associated mental health complications and which visibly tired the claimant during the hearing.

The alleged shoulder disability

40. The only condition the respondent does not concede which is relevant to this claim is the claimant's shoulder condition which arose in 2021.

41. The claimant provided the following evidence about her shoulder complaint:-

    41.1. On 16 July 2021, the claimant attended a GP appointment due to increasing pain in her right shoulder, and was referred to an osteopath;

    41.2. The claimant told Mr Davies about her shoulder problem and investigations;

    41.3. On 8 September 2021, the claimant saw an orthopaedic surgeon about her shoulder;

    41.4. The shoulder complaint interfered with her ability to carry a large and heavy suitcase, giving rise to the alleged discrimination on 23 September 2021;

    41.5. On 24 September 2021, the claimant was told she had calcific tendonitis and that she might need time off for surgery and steroid injections;

    41.6. The claimant made Mr Davies aware of her condition and proposed procedure; and

    41.7. On 30 September 2021, the claimant had tendonitis barbotage performed on her shoulder.

42. A person (P) has a disability they meet the criteria set out in *section 6 Equality Act 2010*:-

> *"(1) P has a disability if:*
>
> *(a) P has a physical or mental impairment, and*
> *(b) The impairment has a substantial and long-term adverse effect on P's ability to do normal day to day activities."*

Law relating to disability

43. The claimant bears the burden of showing us that she meets this definition, on the balance of probabilities (*Morgan v Staffordshire University [2002] IRLR 190*; *Tesco Stores Limited v Tennant [2020] IRLR 363*). When determining the question of disability, we must take account of such guidance as we think necessary (*paragraph 12, Schedule 1 Equality Act 2010*). We consider it is necessary to take into account the government guidance *"Guidance on matters to be taken into Account in Determining Questions Relating to the Definition of Disability"* (**"Guidance"**). Such guidance is guidance only and should not be taken too literally or used to adopt a checklist approach (*Leonard v Southern Derbyshire Chamber of Commerce [2001] IRLR 19*).

44. In *Goodwin v Patent Office [1999] ICR 302*, it was held that there are four limbs to the definition of disability and this is reflected in the legislation:-

    44.1. Does the person have a physical or mental impairment?

    44.2. Does that impairment have an adverse effect on their ability to carry out normal everyday activities?

    44.3. Is that effect substantial?

    44.4. Is that effect long-term?

45. The term 'substantial' is defined under *s212 Equality Act 2010* as being *"more than minor or trivial"*. Normal day to day activities are things people do on a regular basis such as shopping, reading, writing, conversing, getting washed and dressed, preparing food, eating, carrying out household tasks, walking and travelling, socialising and working (*Guidance, D2 to D9*). Normal day to day activities must be interpreted as including activities relevant to professional life (*Paterson v Commissioner of Police of the Metropolis [2007] IRLR 763*).

46. The focus should be on what the claimant cannot do, rather than on what they can do. It is generally not permissible to weigh a balance between what can and what cannot be done, but considering what the claimant is able to do may assist in determining a factual dispute about the claimant cannot do. This principle was articulated by Mr Justice Cox in *Ahmed v Metroline Travel Ltd UKEAT/0400/10/JOJ*:-

    > *"Each case will, of course, depend on its own particular facts, and there will sometimes be cases where there is a factual dispute as to what a claimant is asserting that he cannot do. In such circumstances I agree with Mr Dyal that findings of fact as to what a claimant actually can do may throw significant light on what he cannot do".*

47. *Paragraph 2(1) Schedule 1 Equality Act 2010* says:-

    > *"(1) the effect of an impairment is long term if –*
    >
    > *(a) It has lasted for at least 12 months,*
    > *(b) It is likely to last for at least 12 months, or*
    > *(c) It is likely to last for the rest of the life of the person affected.*
    >
    > *(2) If an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal everyday activities, it is to be treated as continuing to have that effect if that effect is likely to recur."*

48. For current impairments which have not lasted 12 months, we should decide whether the substantial adverse effects of the condition are likely to last for at least 12 months, where 'likely' is defined as *"could well happen"* (*C3 Guidance*). 'Could well happen' is the meaning of 'likely' in respect of disability in the *Equality Act 2010*.

49. The issue of how long an impairment is likely to last is determined at the date of the alleged discriminatory act and not the date of the tribunal hearing (*McDougall v Richmond Adult Community College [2008] ICR 431, CA*). Subsequent events should not be taken into account.

50. An impairment is treated as having a substantial adverse effect if it 'could well happen' that the substantial adverse effect could occur if the person who may be disabled stopped implementing supportive or preventive measures, such as medical treatment (*SCA Packaging Limited v Boyle [2009] ICR 1056)*.

51. The question to be determined is whether or not the claimant was disabled at the time to which the disability claim relates, and it must put itself into that time to resolve the *Goodwin* questions (*All Answers Ltd v W [2021] IRLR 612*). In that case, Lewis LJ said:-

> *"A tribunal is making an assessment, or prediction, as at the date of the alleged discrimination, as to whether the effect of an impairment was likely to last at least 12 months from that date. The tribunal is not entitled to have regard to events occurring after the date of the alleged discrimination to determine whether the effect did (or did not) last for 12 months".*

The alleged shoulder disability – conclusion

52. We are only required to determine whether the claimant's shoulder condition amounted to a disability, because the other conditions relevant to the claim have been conceded by the respondent.

53. We are satisfied that the condition amounted to a medical impairment. This is clear from all of the evidence, including the requirement for the claimant to undergo treatment for the complaint. The difficulty is that the claimant has not presented sufficient evidence to show that the condition had a substantial adverse effect on day to day activities. We accept the claimant's evidence that it was difficult to carry items with the affected arm during this period.

54. The claimant told us, and we accept, that she could not wheel or carry a suitcase with comfort on a work trip in on 23 September 2021, which gave rise to the matters which she says amounted to disability discrimination. However, we were not persuaded that the claimant suffered any impact further than this which strikes us as the sort of minor or trivial inconvenience which arises from any physical injury. It does not, in our judgment, amount to a substantial adverse effect for that reason. The impact described was not more than minor or trivial.

55. It follows that there cannot be a long-term substantial adverse effect where we have found no substantial adverse effect at all. In our judgment, the claimant's shoulder condition did not amount to a disability at the time of the less favourable treatment alleged to have been done because of the shoulder disability in September 2023. This means that the claimant did not have the requisite protected characteristic to bring that claim and so it must be dismissed.

56. Consequently, there is no need for us to find facts in relation to the shoulder disability claim, and so we do not.

Findings of fact for the remainder of the claim

57. The relevant facts are as follows, as we have found them on the balance of probabilities. To find facts on the balance of probabilities, we are making an assessment about whether something is more likely than not to have happened. In other words, if considering whether one of two things happened, we are looking for the one that appears to us to have a greater than 50% chance of being the truth of the matter. Not all of the evidence heard in the hearing, or all of the disputed evidence, is recorded and resolved in this section. We heard evidence which was ultimately not relevant to the issues in the case. Where that occurred, we do not need to find facts from it, so we do not.

58. Where we have had to resolve any conflict in the evidence, we indicate how we have done so at the material point. When finding these facts, we have considered the documents we were referred to in the bundle, the written evidence in the witness statements, and the oral evidence heard in cross examination.

The start of the claimant's employment

59. The claimant commenced her employment on 4 January 2021. At the time of the hearing, she remains employed by the respondent. Her line manager was Mr Davies, whom the claimant had known for some time after they had worked together previously. Both the claimant and Mr Davies described having a good relationship for some 15 years prior to the matters which gave rise to this claim. Both agreed that the claimant had, in the past, been a high performing sales person earlier in her career.

60. The claimant contends that, on her very first day, Mr Davies advised her not to mention to Mr Sanderson (the Director) that she was a single mother. The claimant contends that she was told about a previous employee who had 'messed things up' when she went on maternity leave, which meant that Mr Sanderson was now wary of single parents. Mr Davies denies making this allegation, and Mr Sanderson denied that having a single parent or single mother working in the team would ever be a cause for concern. Mr Davies explained that the gender split in the team was about 50/50. He said that many of the team had young children. He noted that, because of the effect of the Covid pandemic, some of those were in effect operating as single parents because their partners were either not at home, or were rarely at home. He said that he was generally sensitive to the needs and the impact of having young children at home during this period, because he had his grandchildren at home. Mr Sanderson concurred with those points.

61. We need to resolve this conflict in the evidence, in circumstances where we have the claimant saying one thing happened, and the other party to the conversation says it did not. The only other evidence pertinent to the issue is the voice of Mr Davies' manager, who supports what he is saying. We also accept the wider evidence of the respondent to the effect that other members of the team had caring responsibilities for young children, and that this was accepted by the respondent and its managers. Consequently, on the balance of probabilities, we prefer the respondent's evidence on this point. We find as a fact that there was no such warning

given to the claimant to the effect that she should not mention being a single mother to Mr Sanderson.

The claimant's performance and 14 July 2021

62. Throughout the first half of 2021, Government restrictions in response to the Covid-19 pandemic meant that the claimant's daughter was in and out of her educational setting. When the claimant's daughter was at home, the claimant was required to supervise her and her schooling alongside her job. This was the claimant's daughter's first year in school. The respondent queries whether the claimant really was solely responsible, as it understood that Mr Kirby was living with the claimant and her daughter at some point during this period. We heard no evidence that, even if Mr Kirby did move in at that point, he immediately assumed the sort of childcare supervision responsibility that would have taken the load away from the claimant. We accept the claimant's evidence that she was, to all intents and purposes, a single parent at this time.

63. It is accepted that the claimant was not performing to her expected targets during this period. She was not booking sales appointments as anticipated, which should have later led to sales being made. Mr Davies says that he was surprised by this, given the claimant's prior performance when he had known her in the past, and that he knew that she had had a good understanding of what would be required in this sort of role. The claimant says that she was struggling to balance work with her childcare responsibilities and also the impact of her health conditions. The claimant's performance was raised with Mr Sanderson, who decided to join the claimant and Mr Davies for the claimant's half year review on 14 July 2021.

64. The claimant relies on comments made on 14 July 2021 as an instance of less favourable treatment because of sex. She says that Mr Sanderson questioned her performance because she was a single mother. She says that she defended her performance on grounds of her health and because of her childcare responsibilities. In cross examination, she did not deviate from her description of the interaction from her witness statement, which read: *"This was immediately dismissed by David Sanderson, who said he was not aware of why I would be home schooling, or why schools were closed (despite being in a national lockdown) and that he was sure I was not the only single mother in Staffordshire"*.

65. Mr Sanderson denies making a statement which was critical of the claimant or which was derogatory about single mums or single mums in Staffordshire. He says that his role in the meeting was to explore reasons for underperformance, to identify where support was needed, and then try to provide that support. Ultimately, the purpose of the meeting was about performance, and so consequences of continued under-performance were explained. We accept that evidence. This is the proper purpose of such meetings and, having not found the underlying disfavour for single mums as the claimant alleged in January 2021, there is no reason for us to consider that there was any other purpose for the meeting.

66. Mr Sanderson says that the claimant raised the issue of being a single parent (and a mum) in response to those enquiries. He agrees that the claimant expressed the difficulty with working as a single parent with home schooling, and says that he expressed sympathy with that situation. He says that the claimant explained that Mr

Sanderson could not know the challenges of working as a single mum with home-schooling because he was not one. We accept this account because it does not contradict what the claimant says about the conversation. In response to the claimant raising that Mr Sanderson could not directly understand the pressures, Mr Sanderson and Mr Davies suggested that the claimant could seek out and speak to colleagues who were also managing childcare responsibilities with work.

67. Mr Sanderson denies making any comment about the claimant not being the only single mum in Staffordshire. He says that the entirety of his comments about the claimant being a single parent were focused on trying to point her to other people in a similar situation who could offer advice. In cross examination, he said that this was the best he felt he could do in the situation where the claimant had already highlighted to him that he could not offer advice or support about the issue because he was not a single parent or a single mum.

68. Mr Sanderson was asked about this conversation in the investigation meeting into the claimant's grievance on 2 February 2022. The notes from that meeting were at pages 462 to 463. In that meeting, Mr Sanderson explained that the 14 July 2021 was one of a number he had had with members of the team and so the claimant was not singled out. He does not appear to specifically address the allegation that he had made a claimant about the claimant not being the only single mum in Staffordshire.

69. Mr Davies was asked about this allegation on the same day. The notes taken from that conversation are from page 466 to 468. He said that Mr Sanderson had expressed admiration for the claimant because of her juggling work and childcare in the way she had described. Mr Davies is brought back to the issue again much later in July 2023 (page 677). There, he is quoted as describing the comment as being: *"being a single mum isn't isolated to you in Stafford. There are lots of people in the team who are single mums around the country."*

70. The claimant remains very upset about the conversation on 14 July 2021. We accept that she found the meeting upsetting and difficult, and that she perceived the meeting to be hostile in nature. However, in terms of what was said and why, we prefer the accounts of Mr Sanderson and Mr Davies. We find that the meeting was intended to be supportive in nature, through the framework of performance improvement. We find that the claimant raised difficulties with parenting at the time alongside work. We find that Mr Sanderson and Mr Davies sought to support her by pointing her to the example of others, and suggesting she speak to them.

71. In this vein, we find that Mr Sanderson told the claimant that she was not the only single mum working and so there must be others she could draw advice from. We do not accept that Mr Sanderson was dismissive of the claimant, or her childcaring responsibilities, or that he questioned why the claimant was home schooling in a manner intended to cause offence to or undermine the claimant.

23 September 2021 and the conversation with Mr Davies

72. The parties agree that the conversation about the claimant's performance continued on 23 September 2021. The claimant considers that Mr Davies treated her less favourably because of her sex in that conversation. She says that Mr Davies labelled her child a 'distraction', and said that she was distracted in team meetings. She also

alleged that Mr Davies asked her to hand in her resignation, commenting that he had never seen anyone fail so badly and that he did not understand what had happened to her since they had last worked together. She said that she asked for the performance improvement process to be delayed to allow her to complete a re-mortgage of her home, and that Mr Davies agreed.

73. The claimant drew on a handwritten note at page 262 to support her recollection of the conversation. That single page is called *“Anton PIP”* and has *“2pm. 23/9/21”* at the top right hand side of the page. The claimant has highlighted entries which she considers particularly relevant. To us, the most relevant entries are:-

    73.1. *“Job title -> not relevant”*;

    73.2. *“In 6 years never seen anyone fail as badly as me”*;

    73.3. *“Disorganised – everybody wanted to be me”*;

    73.4. *“Distracted on camera during meetings”*;

    73.5. *“PIP up to 3 months – no guarantee on time”*;

    73.6. *“January. 1st December notice 1st January start”*;

    73.7. *“David kid – distractions… halfyear review”*.

74. Mr Davies says that the claimant’s account of the conversation is a mixture of fabrication and misconception. He denies that anything said could be construed as less favourable treatment because of the claimant being female. He acknowledged that the issue of performance management and the possibility of a performance improvement plan was discussed in greater detail than previously. He says that he did not suggest that the claimant should hand in her notice. He denied describing the claimant’s daughter as a distraction. Mr Davies says that he did all he could to delay a formal performance improvement process, and understood the claimant’s concerns about her remortgage process.

75. In cross examination, Mr Davies gave more context to his denial about these remarks. He said that he had his grandchildren living with him during the Covid pandemic, and so he did appreciate the claimant’s difficulties. He also said that he remained hopeful that the claimant would begin to generate revenue imminently, which was in the interests of all. He said it would make no sense to encourage the claimant to resign, having encouraged her through the early stages of forming sales relationships, when it would take a replacement at least three months to catch up with that progress. He noted the claimant’s notes, but did not consider they reflected the emphasis of his input. He noted that the page shows no reference to being told or advised to hand her notice in, and that the word ‘notice’ seems to relate to the notice required before a formal PIP was started. He said that, if he wanted to manage the claimant out as alleged, he would not have delayed the onset of the PIP.

76. On balance, again, we prefer Mr Davies’ evidence in respect of this conversation. We do perceive that the claimant has a tendency to construe everything said to her in the most negative light. We note the claimant’s own account that her health issues, particularly her mental health, were impacting her at this time. We accept Mr Davies’

explanation as to why he would not make the comments alleged. Consequently, we find the following facts in relation to this conversation:-

76.1. Mr Davies advised the claimant her performance remained a concern;

76.2. Mr Davies acknowledged the challenges the claimant referenced;

76.3. Mr Davies advised the claimant that she might be put on a performance improvement plan;

76.4. The claimant expressed worry about her remortgage;

76.5. Mr Davies said he could delay the process for a month, but that notice would be given without improvement;

76.6. At no point did Mr Davies encourage the claimant to resign; and

76.7. Although Mr Davies acknowledged the claimant's daughter, he did not describe her daughter as a distraction.

29 October 2021 and alleged comment by Mr Sanderson

77. The claimant alleges that Mr Davies and Mr Sanderson made further discriminatory remarks in a meeting on 29 October 2021, of which she only had one hour's notice. She said that Mr Sanderson was positive at the start of the meeting but that there was disappointment in performance and that she would be placed on a PIP from November. She says that Mr Sanderson enforced his belief that as a working mum she could not succeed. She said that she was presented with a draft plan, which also spiked her anxiety.

78. Both Mr Davies and Mr Sanderson deny meeting the claimant on 29 October 2024. Mr Sanderson denies being part of the conversation in relation to putting the plan into place at all, and considers that this issue relates back to the conversation which happened earlier in July 2021 where similar allegations were repeated. Mr Davies says that he was involved with putting the performance improvement plan into place but that no such comments were made and there was no meeting on 29 October 2021.

79. At 4.30pm on Friday 29 October 2021, Mr Davies sent the claimant a draft PIP by e-mail with the subject 'Rough doc for PIP – to be discussed and agreed on Monday meeting' (page 304). The e-mail says:-

> *"Hi*
>
> *As promised, four our Monday meeting to talk through, amend and finalise as agreed.*
>
> *I'll drop a regular Friday meeting in to review now."*

80. The PIP was at page 305 to 307 and was expressed to begin on 1 November 2021. At 11:44am on 1 November 2021, Mr Davies sent a further draft plan and asked for completion so that it can be agreed at 4:00pm (page 310). The claimant sent a further

updated version at 4:13pm (page 308). The claimant then commenced sick leave on 8 November 2021. Mr Davies is asked about this process during the grievance process, and his response supports the position he took in the hearing in respect of the 29 October 2021 allegation.

81. We need to resolve this conflict in the evidence, where the claimant gives one account and the respondent, supported by contemporaneous documentation, gives another. It is plain on the balance of probabilities that we favour the respondent when it is supported by the evidence in the bundle. We do not consider that there was a meeting on 29 October 2021, as is alleged. We find that Mr Sanderson did not attend the meeting on 1 November 2021 (if the claimant is wrong about the date), and so he could not have made the comments alleged. There is no evidence supporting his presence apart from that offered by the claimant. Both Mr Sanderson and Mr Davies deny that Mr Sanderson was present for that conversation, and we see no reason why they would be untruthful about that.

82. In our view, it is more likely than not that the claimant is either intending to refer to the July 2021 conversation, or is otherwise completely mis-remembering what was said to her in meetings at various moments now that this time has passed. If the former, then the matter is dealt with above. If the latter, then that does not mean that the events occurred at all.

16 December 2021 – Covid and attending the office

83. The claimant commenced a phased return to work on 13 December 2021. Prior to return, the claimant and Mr Davies agreed that an occupational health referral should be made. The PIP remained in force at this time. The claimant says that Mr Davies refused to pause the PIP despite her illness. This issue is covered further below.

84. The claimant's witness statement describes being asked by Mr Davies to attend the office on 16 December 2021. The claimant says that she woke up that morning with Covid-19 symptoms. She says that she communicated that she would work from home for the day instead of risking spreading Covid-19. She says that Mr Davies eventually told her that she must come into the office or take the day off sick.

85. Mr Davies considers the claimant's description to be 'fabrication'. He says his position was that if the claimant was unable to work, she should take the day off sick. If she could work, then it would be best for her to attend the office because the respondent had arranged in person training for the claimant to close gaps identified in relation to the PIP. Mr Davies says, and we accept because it is not contradicted, that the claimant did not raise any condition or ailment, or impact of Covid, or that she was shielding, in the conversation.

86. At 10:22am on 16 December 2021, the claimant e-mailed Mr Davies to advise that she was heading to the office. She said that she was *"more than happy to come in if you're happy for me to do so however I am still awaiting a PCR result, even if this is clear it may still be frowned upon by others at the office"* (page 325).

87. Mr Davies replied four minutes later, and wrote (page 324):-

> *"As I said, it's your call and not mine. If you don't feel well enough, the symptoms you have highlighted were feeling very unwell and having to take medication that's made you feel much better, then it's up to you if you come in or not.*
>
> *The* [in person training] *sessions were designed to benefit your way of learning so you get the most out of it, if you cannot come to the office that is entirely up to you, I cannot tell you either way, it's your choice.*
>
> *As I said, and I will again, this is entirely your choice and judgement."*

88. There was due to be a social event on the same evening. We find that this was unrelated to the reason why Mr Davies was asking the claimant to be on site. This is what he says and it is not mentioned in his e-mail above. In any event, that social event was emphasised to be voluntary because of Covid-19 by Mr Davies on that same day (page 323).

1 February 2022 – Mr Davies feedback on occupational health report

89. The claimant and the respondent received the first occupational health report, which made the following recommendations for consideration by management:-

89.1. Occasional unplanned breaks of 10 to 15 minutes if the claimant feels overwhelmed by work to support her mental health;

89.2. Flexibility in work timing to help with the claimant's mental health;

89.3. Review the claimant's job role and responsibility;

89.4. Offer limited activities for 2-3 months until the claimant recovers confidence in completing the aspects she finds difficult;

89.5. Allowing extra time to complete training;

89.6. Increased managerial support;

89.7. Management to provide early intervention when the claimant has low mood and anxiety by providing regular positive feedback;

89.8. Conducting check ins and support to attend GP appointments;

89.9. Signposting to internal psychological therapy;

89.10. Assigning a work buddy to discuss day to day queries;

89.11. Discuss work related concern on a regular basis;

89.12. Mediation to help change the claimant's perceptions about stress in work;

89.13. The claimant to work in a different team or area of the organisation; and

89.14. Giving the claimant the option to upskill to work in a different part of the organisation.

90. Mr Davies provided his comprehensive views on all of these recommendations by e-mail on 1 February 2022 (pages 477 to 483). In summary, he considered that the respondent was doing several of those recommendations already. Others, such as moving the claimant or examining her job role, were not considered to be ‘reasonable’ given the position of the parties and the needs of the business.

91. Under the heading “Current Fitness to Work”, Mr Davies writes a passage which forms the basis of the claimant’s specific complaint about his feedback (page 479):-

> *“’Fit with Adjustments’. Since returning to work, we have provided an extended phased return, delayed the Personal Improvement Plan start by 5 weeks and adjusted expected revenues down by 33%, based on what would normally be expected through a 5 week Personal Improvement Plan. With the new information on the long term impact of your health conditions, we are now considering moving this to a disability plan as an alternative.”*

92. On page 478, Mr Davies outlines what moving to a disability plan may mean:-

> *“Based on your feedback today, the occupational report and our discussion yesterday about the long term impact of sleep aponia and hypertension crisis on your life and the long term side effects being highlighted as a consideration, I think you may be on the wrong plan at the moment [.] I think you should be on the Disability version of the plan and have attached a copy of the company policy to help you understand the change from the process we a[re] currently following for the performance improvement plan.*
>
> *Instead of you receiving sanctions, we would assess any adjustments that could be made to your current role… If, through this new plan, improvement to a reasonable level cannot be achieved then we would consider ill health termination or redeployment, depending on the circumstances.”*

93. On page 481, Mr Davies gives his views about one recommendation which forms part of the claimant’s specific failure to make reasonable adjustments claim:-

> *“<u>early intervention when has low mood and anxiety by regular positive feedback</u> – Where I see or am advised or pick up on low mood and anxiety, I will continue to provide early intervention and support. In addition to this, when reviewing weekly Performance Improvement Plan activity, I will always provide positive feedback where progress has been made and weekly improvement is shown to highlight the positive efforts each week.*
>
> *You can also advise me when you are feeling low or anxious if I don’t pick up on this.”*

<u>Interactions with Mr Potter</u>

94. The claimant raised a grievance about her treatment by Mr Davies and Mr Sanderson, essentially around her perception of the matters which give rise to this claim. In February 2022, the claimant's line management passed to Mr Potter. Mr Potter was very candid in cross examination about not being particularly keen to line manage the claimant. He understood that the line management was being moved to him because the claimant had complained about her previous management. Mr Potter said that he had a small and settled team and he was concerned about the resources required to manage the claimant in the circumstances. That said, he told us, and we accept, that he approached line managing the claimant in line with policy and with the intention of doing a professional job.

95. The claimant went on sick leave shortly after transferring into Mr Potter's team. Mr Potter made contact with the claimant during her sick leave to check how she was. The claimant says, in we accept, that he did so on 11 March 2022 and 23 March 2022. The conversation on 23 March 2022 gives rise to this part of the claimant's claim. She says that she engaged in a conversation about her illness and disabilities with Mr Potter. It was apparent to her that Mr Potter had not seen the occupational health reports, and so she says this conversation became detailed about her illnesses and how they affected her. Her complaint is well articulated in her witness statement at the end of the statement's page 11 of 15:-

> "*He seemed to be somewhat distracted. I asked why he had not been informed as my acting line manager, surely this was in all of our interests. He confirmed that it was of no interest to him, and he was just following the guidance of HR, which upset me and provoked a further stress reaction affirming this was just another box ticking exercise. At this point my partner had to take over the call and requested for everyone's benefit that the calls are replaced with e-mail, so things are documented going forward. Huw agreed…"*

96. Mr Potter pointed us to his notes of the 11 March 2022 contact (page 516). He was not challenged about those notes and we accept them as an accurate record of the discussion. It is clear from the notes that the claimant gave Mr Potter a detailed update of her various conditions, including her fear that her mental health exacerbation was reducing her life expectancy. We find that Mr Potter engaged with the claimant about her illnesses and the impact they had on her on 11 March 2022.

97. On 22 March 2022, Mr Potter e-mailed the claimant to set up a welfare call (page 520). It was agreed he would call her at 11:00am the following day (page 519). Mr Potter's notes of the 23 March 2022 meeting are on pages 516 to 518. He denies saying that he was not interested in the claimant's ailments, and considers that this is a misperception on the claimant's part of his keenness to focus on the future and prospects of recovering back into work. He said when giving evidence that he did not see as much value in covering what had happened in the past (which was the subject of the separate grievance) when his role as the line manager was to see if the claimant was on a road to recovery.

98. Mr Potter's contemporaneous notes differ from the claimant's accounts in other material ways. The notes indicate that the claimant started the conversation about the call being part of an HR tick box exercise in response to his question about

whether the respondent can do anything else to assist her. They indicate the claimant's view that the respondent was under an obligation to put all recommended adjustments into place, and so the claimant did not understand Mr Potter's question about what else can be done. The notes record that the claimant then exhibited symptoms of severe stress and anxiety and left the room, at which point Mr Kirby picked up the conversation and suggestion everything should be in writing. The notes recall that Mr Kirby told Mr Potter that he was more supportive than the claimant's previous line management.

99. After reference to those notes, Mr Potter denies being dismissive of the claimant's health conditions or the recommendations made by occupational health. He notes, and we accept, that he did not have written consent to see the occupational health report until after some delay. Nevertheless, he says he was not dismissive, only that his focus was not on matters which the grievance process would be covering. He accepted it would be best to have been fully up to speed with the claimant's state of health, but that this does not mean that he was not interested.

100. On balance, we prefer the evidence of Mr Potter over that of the claimant, where accounts diverge. It is apparent to us that the claimant was extremely stressed and anxious in the call, and left before it ended. We are not sure on what basis the claimant has been able to give primary evidence about something where she was not present. We assume the evidence has been introduced by Mr Kirby. More fundamentally, having accepted Mr Potter's notes as accurate, we can see that he did take a fairly detailed account of the claimant's health conditions on 11 March 2022. We find that Mr Potter did engage with that conversation on the earlier occasion and was not dismissive. We do not find that he was dismissive on 23 March 2022, and instead find that he appropriately tried to engage with the claimant looking to the future. The conversation caused a stress reaction in the claimant. We do not find that Mr Potter did anything untoward to trigger that reaction.

101. Some confusion has arisen because the claimant makes these claims about the 23 March 2022 meeting in her witness statement, but her claim, the list of issues and Mr Potter all address a meeting on 20 October 2022 where much the same allegation is levelled. The claimant has presented no primary evidence about what happened on 20 October 2022. Her witness statement is silent about that date. Mr Potter talked about that meeting in his witness statement and showed us his contemporaneous notes of the meeting on pages 540 to 541. It follows that we therefore accept the evidence of Mr Potter about this date, because it is unchallenged by other live evidence and we consider that his account is accurate. We find the following facts:-

101.1. During the meeting, Mr Potter wished to gain consent for a new occupational health referral;

101.2. Mr Potter was not dismissive of the claimant's disabilities (and if he was, he would not have suggested a further referral);

101.3. The claimant began to talk about her previous treatment and her grievance, and Mr Potter again focused her in the present and on the future exploration of a return to work;

101.4. The claimant expressed the view that Mr Potter was dismissing any further information because he reiterated that this was an informal meeting to discuss an occupational health referral;

101.5. Mr Kirby was present in the meeting and took part, and Mr Potter said that he was able to take part as it was not a formal meeting;

101.6. Mr Potter said that Mr Kirby could be present generally for those informal meetings if it would assist; and

101.7. When Mr Kirby started to speak in the meeting, Mr Potter reminded him that he was there to support and not speak.

10 March 2023 and Mr Robbie

102. The claimant raised a further grievance with the respondent on 6 February 2023 (page 578). The matter was assigned to Mr Robbie to investigate, and he made contact with the claimant by email on 21 February 2023 (pages 584 to 585). On 27 February 2023, the claimant told Mr Robbie that she would like her partner to attend their meeting (page 583). On 28 February 2023, Mr Robbie told the claimant that Mr Kirby could only attend if he was a Sky employee or a union representative (page 583). That same morning, the claimant wrote (pages 582 to 583) –

> *"Hi Sean*
>
> *We live together & I have been advised it is a reasonable adjustment due to my disabilities.*
>
> *Regards*
>
> *Jodie".*

103. Mr Robbie replied to give the claimant access to the grievance policy, and also wrote (page 582) –

> *"…Could you let me know what support is needed for the interview and why specifically you would prefer it to be your partner so I can see if I can arrange the adjustments. Our normal process is for this to be a Sky employee or Trade Union rep".*

104. The claimant states her case for having Mr Kirby attend the meeting as a reasonable adjustment towards the end of 28 February 2023 (pages 581 to 582) –

> *"Thank you for the below, subsequent to my disabilities which impair my ability to absorb large amounts of information I have asked on a number of occasions if my partner can accompany me to meetings as such.*
>
> *The reason I have provided is his knowledge of the history surrounding these matters and his ability to raise questions which I may otherwise not, due to being overwhelmed.*

This has always been denied by Sky however I have been advised given the nature of my disabilities this should be considered a reasonable adjustment."

105. We find that Mr Robbie accepted that the claimant required assistance in the meeting and was prepared to adjust the policy of requiring the claimant's accompanying person to be a Sky employee or a union representative. We do so because he indicated this in his e-mail of 7 March 2023 (pages 580 to 581). Relevantly, he wrote –

"In relation to your partner accompanying you to the meeting, Carl is named as a witness to some of the points I wish to speak to you about and I may wish to speak to him about these after I have spoken to you and some of the other witnesses, therefore it would not be reasonable to allow this.

Whilst it is not normal process, I am open to you finding another person who is not a Sky employee or Trade Union rep to accompany you for emotional support if this makes the process easier for you…"

106. The claimant made the case again on 9 March 2023, when she explained why Mr Kirby needed to attend and not a friend or someone else as suggested (page 593). She wrote, relevantly –

"I cannot ask a friend due to the sensitive nature of the information…

I also have a medical disability which causes acute & sudden voice loss during stress, and am under the speech therapist at the hospital for this as well as under stress, and am under the speech therapist at the hospital for this as well as under a psychiatrist for my mixed anxiety/depression/panic disorder due to my deteriorating health conditions which all result in my lack of understanding of questions or situations, lack of concentration and recall information during stress, and I am now classified as 'incapacitated' by DWP ESSA & PIP. My partner is my career [sic] and I also have an assistance dog."

107. We find that the claimant clearly communicated the adjustment she needed, including notifying Mr Robbie that Mr Kirby was her carer for these conditions. She articulated the conditions suffered from, referenced the occupational health reports (which Mr Robbie had access to), and described the impact that the stressful situation was likely to have on her conditions. She explained why Mr Kirby was the only suitable person to accompany her, being the only one aware of her conditions and their impact, and being the only person who cared for her.

108. On 10 March 2023, Mr Robbie again refused for Mr Kirby to attend the meeting *"as he may need to be spoken to as a witness and they all need to be spoken to independently"*. The claimant is advised to find someone else, and that the meeting can take place in Stockport *"with regular breaks so that your partner [Mr Kirby] can be in the building so when you need some support you can go and see him"* (page 589).

109. The claimant asked if Mr Kirby could be spoken to first to alleviate that concern (page 589), but Mr Robbie says *"I did consider that but no he can't be, I need your version of events first. You would then have the problem of him being in your meeting which also wouldn't be an independent process"*.

110. On the same date, Mr Kirby wrote an e-mail to be passed to Mr Robbie (page 588), which the claimant did. It says, relevantly –

> *"Jodie has asked me to reply as this is now causing her some further stress and aggravation.*
>
> *I am not too sure how much you have been made aware of given the apparent lack of communication within Sky, however Jodie suffers with conditions that impair her ability to handle excessive stress and large amounts of information. She has asked for me to be present given the nature of the meetings will involve a lot of information which she will struggle to refrain therefore exasperating [sic] her stress levels. She has a lot of information to present which may be overlooked if she becomes stressed.*
>
> *I feel it unfair knowing this information that you expect her to be exposed to this as it may directly impact the quality of the information presented during the investigation, giving Sky an unfair advantage and her easily being dismissed as has been the case on a number of occasions previously.*
>
> *I believe your reasons behind my attendance are flawed given there is always an option to obtain a written statement ahead of the formal investigation taking place with Jodie."*

111. Mr Robbie responded that afternoon (page 587) with *"Thanks for your e-mail but I won't discuss your case with people I have no idea who they are and who are also not Trade Union representatives"*. Mr Robbie does not change his mind when the claimant gives more information about Mr Kirby, but he does later confusingly say that the claimant can bring someone who he does not know who is not a Trade Union representative if they are a friend (page 586). He reiterates that Mr Kirby is named and could be a witness and so cannot be included, and also reiterates that Mr Kirby could be on site in a face to face meeting for support in breaks.

112. In the end, the meeting was held on Teams on 14 March 2023. The meeting did not progress because the claimant did not consent to being recorded. Mr Kirby was not present in the meeting as he was not permitted to attend by the respondent. The claimant was unsupported in the short meeting, and we accept her evidence that she terminated the meeting because she felt stressed and overwhelmed with the circumstances which arose in the meeting when discussing her health conditions, occupational health, and her current grievance. Mr Robbie was removed from the investigation after the claimant complained about him. Mr Kirby was never interviewed as part of the process.

113. We find the following facts which underlie this part of the claimant's claim:-

113.1. The respondent has a policy of only allowing a respondent employee or trade union representative to accompany someone who raises a formal grievance meeting;

113.2. The claimant has complex health conditions which impair her cognitive functioning and ability to engage with sufficient detail in formal meetings, as she and Mr Kirby set out in their e-mails (and which is described in the occupational health reports);

113.3. Mr Robbie recognised that the usual policy needed adjustment, and he offered to have the meeting in person rather than remotely, and for the claimant to bring someone who was not an employee or Trade Union representative;

113.4. The claimant explained why Mr Kirby specifically was required to overcome her particular difficulties, but the request was refused first on the basis that Mr Kirby might be a witness and second on the basis he was 'not known';

113.5. Mr Robbie's position was contradictory in that he would not allow Mr Kirby to be present because he was a stranger, but would allow a stranger to be present who was not Mr Kirby;

113.6. Mr Robbie did not accept suggestions from the claimant or Mr Kirby which would get around the 'witness' point (to speak to Mr Kirby first or take written evidence first);

113.7. The meeting took place without any of the adjustments discussed or suggested by anyone;

113.8. The meeting broke down when the claimant's health conditions, noted as requiring adjustments, led to being overwhelmed and unable to engage without any adjustments in place; and

113.9. Mr Kirby was not in the end spoken to as a witness anyway.

Relevant law

Direct discrimination

114. *Section 4 Equality Act 2010* lists protected characteristics for the purposes of that Act. Age, race, and religious belief are all listed as protected characteristics. Each of the protected characteristics that the claimant identifies as holding are within the list at *section 4*, and are therefore protected characteristics which the claimant has (by operation of *sections 9, 10 and 11 Equality Act 2010*).

115. *Section 13(1) Equality Act 2010* provides:-

> *"A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others"*.

116. This means that the claimant would have suffered from direct discrimination if we find that, in relation to each allegation, she was treated less favourably than someone

who was not a man in relation to direct sex discrimination complaints, or a non-disabled person in relation to direct disability discrimination complaints.

117. The claimant must establish that she was objectively treated in a 'less favourable' way. It is not sufficient for the treatment to simply be 'different' *(Chief Constable of West Yorkshire Police v Khan [2001] ICR 1065 HL)*. The person(s) with whom the comparison is made must have *"no material difference in circumstances relating to each case"* to the person bringing the claim (*section 23(1) Equality Act 2010*). The comparator should, other than in respect of the protected characteristic, *"be a comparator in the same position in all material respects as the victim" (Shannon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337 HL)*. If there is no such comparator in reality, then the Tribunal should define and consider how a hypothetical comparator would have been treated if in the same position as the claimant save for the fact that they would not have the protected characteristic relied upon *(Balamoody v United Kingdom Central Council for Nursing, Midwifery and Health Visiting [2002] ICR 646, CA)*.

118. The phrase 'because of' is a key element of a direct discrimination claim. In *Gould v St John's Downshire Hill [2021] ICR 1 EAT*, Mr Justice Linden said, in respect of determining 'because of':-

> *"It has therefore been coined the 'reason why' question and the test is subjective… For the tort of direct discrimination to have been committed, it is sufficient that the protected characteristic had a 'significant influence' on the decision to act in the manner complained of. In need not be the sole ground for the decision… the influence of the protected characteristic may be conscious or subconscious."*

119. It is a defence for a respondent to show that it had no knowledge of the protected characteristic relied upon, on the basis that the protected characteristic it did not know about could not have caused the treatment complained of (*McClintock v Department for Constitutional Affairs [2008] IRLR 29 EAT)*. However, this defence does not apply where the act itself is inherently discriminatory (such as differentiation on the grounds of a protected characteristic), and in such cases whatever is in the mind of the alleged perpetrator of the discrimination will be irrelevant (*Amnesty International v Ahmed [209] ICR 1450 EAT*).

120. Under *section 136(2) Equality Act 2010*, the claimant needs to show facts, found on the balance of probabilities, which could lead the Tribunal to properly conclude that the discrimination has occurred before any other explanation is taken into account. If the claimant succeeds with this, then it is for the respondent to show that the contravention has not occurred (*section 136(3) Equality Act 2010*). The Tribunal must first consider whether the burden does shift to the respondent. The claimant must show more than simply there is a protected characteristic and a difference in treatment (*Madarassy v Nomura International Plc [2007] IRLR 246*).

121. Once the burden has shifted, if it does, the respondent must to show that the treatment was 'in no sense whatsoever' due to the protected characteristic *(Igen Ltd v Wong [2005] IRLR 258)*. In weighing up whether or not there has been discrimination, the Tribunal should consider all of the evidence from all sides to form an overall picture. Causation, or the 'why' the conduct was committed, is a subjective

conclusion of law rather than objective conclusion of fact: what is the reason for the conduct and is that reason discriminatory (*Chief Constable of West Yorkshire Police v Kahn [2001] UKHL 48*. It is almost always the case that the Tribunal needs to discover what was in the mind of the alleged discriminator (*The Law Society v Bahl [2003] IRLR 640*).

Failure to make reasonable adjustments

122. *Section 20 Equality Act 2010* provides:-

> *"(1)…*
>
> *(2)…*
>
> *(3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.*
>
> *…."*

123. *Section 21 Equality Act 2010* provides that a failure to comply with the three parts of *s20* is a failure to comply with a duty to make reasonable adjustments, which is an act of discrimination. In other words, the employer must take reasonable steps to alleviate the substantial disadvantage where 'substantial' means *"more than minor or trivial"* (*section 212(1) Equality Act 2010*).

124. An employer is not liable in respect of a failure to make reasonable adjustments unless it knows or is reasonably expected to know that a PCP will place the employee at a substantial disadvantage. *Schedule 8 Equality Act 2010* deals with in work reasonable adjustments. *Paragraph 20(1)(b)* includes employees by virtue of the definition of an 'interested disabled person' in *Part 2 of Schedule 8*. *Paragraph 20(1)(b)* reads (together with *20(1)*):-

> *"A (employer) is not subject to a duty to make reasonable adjustments if A does not know, and could not reasonably be expected to know…that an interested disabled person has a disability and is likely to be placed at the disadvantage referred to in the first, second or third requirement"*

125. Often, cases will turn on whether or not the employer has adopted or operates the 'PCP' which is being alleged. That is principally a finding of face made by the Tribunal on the available evidence. Provisions and criteria are usually written down and understood to be rules or measurements for certain things to be done or made available. The Tribunal will examine whether the circumstances amounting to the PCP have been applied to a claimant, and then consider whether it would be done so again or applied in analogous scenarios to others. If the answer to those considerations is 'yes' then there is likely to be a practice (*Ishola v Transport for London [2020] IRLR 358)*. A 'practice' might be found where a Tribunal considers there is an expectation or requirement for something to be done or not done (*Carerras v United First Partners Research Ltd EAT 0266/15)*.

126. A holistic approach should be adopted when considering the reasonableness of the adjustments, including the timing of those adjustments, and may include factors such as the effectiveness of the steps, the cost, the practicability, and the nature and size of the employer's undertaking *(Burke v The College of Law and another [2012] EWCA Civ 87 CA)*. An employer cannot properly be criticised for failing to take a particular step or failing to take particular advice because the Tribunal is looking at the end of the process and at what has or has not been done to alleviate a substantial disadvantage and whether that decision is reasonable (*Tarbuck v Sainsbury's Supermarket Ltd [2006] IRLR 664*).

Time limits

127. *Section 123(1) Equality Act 2010* provides that claims for discrimination (of which failure reasonable adjustments is one) should be brought within three months of the act being complained of. Time can be extended to take account of a period in ACAS early conciliation where, if ACAS notification occurred within three months, the days spent in early conciliation will 'stop the clock'. Events occurring more than three months before the claim is issued may be brought as claims in time if they form part of a course of related discriminatory conduct, the last one of which is in time when the claim is brought.

128. If, despite all of the above, a claim is still brought outside of the three month time limit, the Tribunal can extend time if it considers that it is just and equitable to do so. This is a broad discretion which requires the Tribunal to balance all of the circumstances of the case including the length and reason for the delay, the prospects of the claim brought out of time, and any other factor which appears relevant. The Tribunal should weigh those factors to determine the prejudice to each party in extending or not extending time, and then make a decision (*Abertawe Bro Morgannwg University Local Health Board v Morgan [2018] EWCA Civ 640*). Time will almost always not be extended where time limits are being considered at a final hearing and the Tribunal has determined that those late claims are not well founded and would be dismissed. In those cases, it would be pointless to extend time anyway.

Discussion and conclusions - Direct sex discrimination

129. In our findings of fact, we have found none of the factual allegations that would give rise to this head of claim. None of the claimant's allegations of conduct which amounted to less favourable treatment are made out. We are entirely satisfied that the respondent referenced the claimant being a single parent in response to the claimant raising it, and that any reference to single parenting or other single mums was made in an effort to provide support and a source of advice. We do not consider that the provision of support or advice in this way, in response to the claimant raising matters of concern or struggle, is 'less favourable treatment'.

130. Consequently, the claimant has not established any facts from which we can properly conclude that there could have been discrimination at play. She has not met the burden placed upon her by *section 136*. It follows that the direct sex discrimination claim is not well-founded and so it is dismissed.

Discussion and conclusions - Direct disability discrimination

131. For the reason given above, we do not consider the 23 September 2021 complaint relating to the claimant's shoulder condition because we have found that was not a disability at the time.

16 December 2021 – Covid and attending the office

132. The claimant contends that she was treated less favourably because of her disability in respect of her exchange with Mr Davies about attending the office when she may have had COVID-19 on 16 December 2021. We have not found as a fact that the claimant and Mr Davies discussed her being on the shielding list. That was completely absence from the documentary evidence between the parties, and the claimant does not mention the need to shield in the discussion about whether or not to attend the office. We accept that Mr Davies wished the claimant to attend the office in person because there were in person sessions running which would be to her benefit. We accept that Mr Davies had no problem with the claimant being off work sick if she was too ill to work.

133. The claimant is required to show facts from which we could conclude that she was the victim of discrimination in respect of this exchange. We do not consider that she has done this. There is no evidence before us, and no facts found, to the effect that Mr Davies acted in any way because of her disability. It was simply not part of the conversation which took place on that day. We do not follow the claimant's assertion that she should have been shielding and that this dictated Mr Davies' approach to her.

134. To the extent that the claimant alleges that she was asked to come in, whereas colleagues were told the evening social event was optional, we consider that these are plainly two completely separate matters which cannot be properly compared. The evening event was optional for all, including the claimant. The colleagues whom the claimant says were treated more favourably were not going to benefit from the training put on for the claimant in the same way. In our view, the claimant has not shifted the burden under *s136* to the respondent because she has failed to establish the 'something more' than the event and her protected characteristic which is required by *Madarassy*.

135. Even assuming for a moment that the burden did pass (which it did not), then we consider that Mr Davies has a completely plausible and acceptable reason for acting as he did which was not informed by disability at all. Telling the claimant not to work if she is ill is not less favourable treatment. The opposite would be so. Asking the claimant to attend the office if she was well enough to work, to benefit from training put on for her, is entirely to do with offering the claimant training required to improve her performance and get up to speed. It is a supportive and favourable approach. In this alternative scenario, we consider that the respondent would discharge its burden to show that its actions were not in any sense whatsoever informed by disability anyway. In addition, the claimant was given the choice about what she did and no decision was imposed upon her. This part of the claim fails and is dismissed.

1 February 2022 – Mr Davies feedback on occupational health report

136. The claimant contends that she was treated less favourably due to her disability because Mr Davies commented that she may need to be on the disability version of a performance improvement plan, which may lead to her dismissal due to her disability. We have found facts that Mr Davies considered the occupational health recommendations and decided that the recommendations which could be put into place already were in place, and explained why other recommendations were not considered 'reasonable adjustments'. In the course of that analysis, he identified that the claimant would struggle to complete her job role to any meaningful degree, including being able to complete the PIP. He therefore considered the disability plan (which was in effect a capability process policy).

137. The claimant has not named any comparators in respect of this part of her claim. To consider whether she has been treated less favourably because of her disability, we must consider a hypothetical comparator. That comparator must have all the same circumstances as the claimant, but not have her disability. This would be someone who had been underperforming, was on a PIP, had been off sick, had an occupational health referral, which had generated these same recommendations. Crucially, the underlying condition(s) which led to the absence and the recommendations would not fufil the legal definition of disability. We ask ourselves what Mr Davies would have done in that scenario. Mr Davies was clear in his evidence that he was concerned that the claimant's health meant that she was unable to do her job role and would be unable to fulfil the requirements of the PIP. Consequently, the PIP was paused. The respondent must be entitled to use its policy where capability is a concern. That concern would be present whether or not the condition(s) amounted to disability. Consequently, we consider that Mr Davies would have acted in the same way. There is no less favourable treatment because of disability. The claimant has, again, failed to show facts from which we could properly conclude that discrimination has occurred.

138. Stepping back, we also note that the disability version of the plan has dismissal due to capability as the very end point final outcome, and we accept the respondent's position that the 'disability' plan was far more suitable for someone in the claimant's position because it is designed to be supportive and to take account of health needs. The PIP did not do those things and was not designed to be used where the employee is significantly unwell or disabled. Viewed through that lens, we consider that Mr Davies was seeking to provide support to the claimant by ensuring she was going through the most appropriate process. We understand that it may not have felt like that for the claimant, but that is our view. The fact that this allegation has formed part of the claim supports the respondent witnesses' general view that the claimant construes everything as acting against her interests, even when they do not so act. This part of the claim fails and is dismissed.

Interactions with Mr Potter

139. The claimant alleges that she was subjected to less favourable treatment by Mr Potter because he was dismissive of her conditions and the history of her working in meetings on either 23 March 2022 or 20 October 2022. We have found as facts that he was not so dismissive. He took notes about the claimant's conditions in the March meeting, showing that he did not close down the discussion as the claimant alleges. The whole reason for the 20 October 2022 meeting was to seek to secure a new occupational health referral so that the parties could obtain an up to date

understanding of the claimant's position. These are not the actions of someone who is dismissing the claimant's illnesses or her experience. We have accepted Mr Potter's evidence that he brought the conversation back to the present and the future because that was his role in those meetings. We make no criticism of that, and do not consider that he can be fairly criticised for these actions when he rightly noted that there was a separate grievance process which considered those historic matters.

140. The claimant has not named a comparator, and so the same hypothetical comparator needs to be applied to this claim. We have no evidence which indicates that Mr Potter would have behaved any differently had the claimant not been disabled by health conditions. It follows we have no evidence that the treatment complained of is less favourable. Indeed, in our view, Mr Potter acted appropriately in difficult circumstances. In any event, the claimant has not therefore discharged her initial burden to show facts from which we could properly conclude that less favourable treatment (if there was any) was due to disability. This part of her claim cannot succeed and it is dismissed.

141. It follows that all of the direct disability discrimination claims are not well-founded and so all allegations under this head of claim are dismissed.

Discussion and Conclusions - Failure to make reasonable adjustments

Early intervention and support when the claimant has low mood or anxiety

142. The claimant had not clearly turned her mind to what policy, criterion or practice the respondent applied to her which caused her substantial disadvantage. She was very clear about what disadvantages were caused to her, and what adjustments she thought should be made. The list of issues record an allegation that the respondent ought to have implemented the recommendation that it provide early intervention and support when the claimant has low mood or anxiety. It is quite obvious that this is an adjustment which would be made to the general policy requirement that the claimant perform her contracted job role. That was a policy which was in place between the parties by the employment contract, and we also note this was Mr Davies' position when responding to the occupational health referrals.

143. The requirement for the claimant to do her job role caused a substantial disadvantage to her because of conditions the respondent knew about which it now accepts are disabilities. The respondent was made aware of this disadvantage by the claimant being off work sick and by the occupational health report which made the specific recommendation which forms the basis of this part of the claimant's claim. In our judgment, the claimant's allegation has two problems which must lead to its dismissal:-

143.1. First, the claimant was not working during the period to which this complaint relates. She was significantly unwell, and the time for 'early intervention' was already gone because the claimant's health had deteriorated. Consequently, we do not consider that making this adjustment from the time we consider the respondent ought to have realised it was required would have assisted in alleviating the substantial disadvantage. It follows that, because of

the claimant's deterioration, the respondent was relieved of the duty to make this particular adjustment.

143.2. Second, in our judgment, the respondent did provide this early intervention and contact in any event, even before the occupational health recommendations were made. The claimant did not perceive the actions of Mr Davies to be supportive, but we accept his evidence that this was his intention. We have not found facts which support the claimant's allegations to the effect that she was not receiving support and was actually pushed out or treated badly by her line manager. We accept that the claimant was having weekly meetings with Mr Davies as a result of the performance concerns, and we accept Mr Davies' evidence that he would be supportive where it was plain to him that the claimant was suffering from low mood or anxiety. We accept Mr Davies' proposition that he would not always be aware of particular moods or bouts of anxiety, given remote working, unless the claimant told him about them.

144. It follows that we conclude that the respondent did make an adjustment to support the claimant, which would have provided early intervention for low mood and anxiety, before the claimant became significantly unwell. We also conclude that by the time the specific occupational health recommendation was communicated to the respondent, the claimant's health had deteriorated beyond the point where this adjustment would assist. Indeed, we consider that the respondent's efforts to keep contact and find out how to help the claimant back to work triggered some of the later complaints against Mr Potter. The respondent has not needed to put this adjustment into formal practice since because the claimant has not returned to work.

145. We do not consider that the respondent can be held liable for any failure to make reasonable adjustments in respect of this specific allegation. The allegation that there has been such a failure is dismissed.

Mr Kirby attending informal meetings on and from 20 October 2022 with Mr Potter

146. It is clear to us from the evidence that there was a general policy and practice that those who were not employees of the respondent were not permitted to attend intra-respondent meetings between line manager and direct reports. It does not seem to us that that is a controversial conclusion, and it is the norm for any commercial organisation to adopt such a policy and practice.

147. We found as a fact that Mr Kirby did attend this meeting on 20 October 2022. We accept Mr Potter's evidence, from his live evidence and his notes, which show that Mr Kirby did attend the informal meetings with him and that Mr Potter was content for him to attend meetings for the purpose of supporting the claimant. In our judgment, Mr Potter and the respondent made an adjustment in allowing Mr Kirby to attend the meetings which alleviated the substantial disadvantage caused to the claimant by the requirements of those meetings.

148. There is no failure to make reasonable adjustments in respect of this issue and so the allegation that there has been such a failure is dismissed.

Mr Kirby attending formal meetings in the grievance process with Mr Robbie

149. Mr Robbie took the opposite approach to Mr Potter in respect of allowing Mr Kirby to attend meetings with the claimant. When doing so, he relied on the respondent's grievance process which allows accompaniment by an employee or Trade Union representative only. The claimant made tangential reference to this PCP in the process of the claim being put, and Mr Potter also accepts this is a distinction in place because he told the claimant that Mr Kirby would not be able to attend 'formal' meetings.

150. The difficulty for the respondent is that, formal or informal, meetings discussing these issues caused the claimant a substantial disadvantage as a result of her conditions which are accepted disabilities. The respondent knew or ought to have known about the conditions and the disadvantage because Mr Potter had accommodated them, they are set out in the occupational health reports, and because the claimant and Mr Kirby articulately communicated them in their e-mails sent to support the effort to get Mr Kirby into the room.

151. It follows that the respondent was then under a duty to make reasonable adjustments to alleviate the substantial disadvantage. Due to disagreement about the adjustments to be made, the meeting occurred without any adjustments in place. We found that the claimant suffered the substantial disadvantage which was communicated and which the respondent should have foreseen, and so the meeting did not progress.

152. We do not consider that the respondent was justified in refusing any of the adjustments requested or suggested by the claimant. The claimant requested that Mr Kirby be present as her carer. It was clear to the respondent that the claimant was advancing several complicated complaints, and that her health conditions were also complicated such that specific support from the person who acts as her carer was likely to be required. The suggestion that a friend could do the same role did not take account of the specific circumstances of the case.

153. Similarly, we are not persuaded that it was not a reasonable adjustment to have Mr Kirby present on the basis he may be a witness in the investigation. This seems an artificial distinction for the same of policy adherence where the claimant and Mr Kirby live together, where Mr Kirby has been involved throughout, has clearly drafted emails, and would be able to speak to the claimant about their respective evidence at any time because they lived together. The respondent did not consider the specific circumstances of this case which meant that their intention behind keeping Mr Kirby 'independent' as a witness could not be achieved anyway. Each of the claimant and Mr Kirby would know what the other would say, and then what they had said, because of their domestic relationship and because of the support Mr Kirby provides the claimant day to day.

154. In addition, it seems odd to us that the respondent would stick so rigidly to the policy of keeping witnesses separate when the ultimate arbiter of this dispute, the Employment Tribunal, allowed all witnesses to watch other witnesses give evidence over the course of the five day hearing. That, in itself, also indicates that perhaps the respondent should have weighed adherence to its own policy differently in light of the substantial disadvantage its approach caused the claimant.

155. We are not clear why Mr Robbie refused to vary the process to allow written evidence, or to speak to Mr Kirby first and alone. We consider both processes would have preserved the respondent's wish for witnesses to give independent evidence anyway, at least as much as was possible where, as we consider, the two witnesses would know about the others' evidence anyway.

156. In our judgment, the respondent failed to make reasonable adjustments to its policy in respect of this part of the claim. In doing so, it failed to prevent the claimant from suffering substantial disadvantage that it accepted could have occurred before it did so. It follows that this part of the claimant's claim succeeds, and she is entitled to remedy for the loss and damage caused by the failure to make an adjustment to this grievance process.

Time limits – Equality Act 2010 complaints

157. All of the unsuccessful complaints relate to events or time periods which end before 29 January 2023 (the time before which claims have not been brought within the primary time limit in the *Equality Act 2010*). They are therefore beyond the jurisdiction of the Tribunal unless we determine that they are brought within alternative permissible time limits because either (1) they form part of a series of discriminatory events which end within the primary time limit, or (2) it is just and equitable in all the circumstances to allow time to be extended so that the claims are considered to have been brought within time.

158. We have not found any discrimination in respect of the unsuccessful complaints. There is no series of discriminatory events. In our judgment, there is no basis upon which it could be just and equitable to extend time so there is jurisdiction over complaints which we have already considered in detail and then found to be not well founded, after examination as if it had been brought in time.

159. Consequently, it is not just and equitable to extend time because our finding that the claims are unsuccessful overwhelms any argument which might be made in favour of extending time. The Tribunal does not have jurisdiction to deal with a claim which is brought out of time where time is not extended, and so the claims are dismissed for this reason as well as on their own merits.

Disposal and next steps

160. The claimant is due a remedy for the single failure to make a reasonable adjustment found. All other claims are dismissed. Ahead of the hearing, the claimant filed a schedule of loss predicated on most or all of the claims succeeding. She will now need to consider and file a new schedule of loss which deals with losses and injury to feelings which flow from that single omission on the part of the respondent. We will then convene a remedy hearing. The orders relating to these steps are sent separately.

161. We end with a comment about the claimant's representative, Mr Kirby. We know that the majority of this judgment will not be to his preference, but that is no reflection at all on his performance during the hearing. We found his conduct of these proceedings to be impressive and undertaken with diligence and courtesy. We have rarely seen a lay representative put a case with such effectiveness.

Employment Judge Fredericks-Bowyer

Dated: 31 August 2024